

MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

June 15, 2023

The meeting began at 2:04pm.

Attendees: Charles DeLaney, Tenants' Representative; Heather Roslund, Public Member; Christian Hylton, Owners' Representative; Samira Rajan, Public Member; Nicole Oddo, Public Member; Guillermo Patino, Chairperson Designee.

INTRODUCTION:

Chairperson Patino welcomed those present to the June 15, 2023 public meeting of the New York City Loft Board. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

VOTE ON MEETING MINUTES:

May 18, 2023, Meeting Minutes

Chairperson Patino asked if there were any comments on or corrections to the May 18, 2023, minutes. Hearing none, Chairperson Patino then asked for a motion to accept the May 18, 2023, meeting minutes and for a second.

Ms. Rajan moved to accept the May 18, 2023 meeting minutes, and **Ms. Oddo** seconded.

The vote

Members concurring: Mr. DeLaney, Ms. Roslund, Ms. Oddo, Ms. Rajan, Chairperson Patino
Members dissenting: 0
Members abstaining: Mr. Hylton
Members absent: Mr. Barowitz, Mr. Roche
Members recused: 0

EXECUTIVE DIRECTOR'S REPORT -- Martha Cruz

Personnel:

It is my pleasure to introduce Alice Chung, our new summer law intern. Alice comes to us from Fordham University School of Law, where she has finished her first year of law school. Welcome Alice. Also, regarding personnel, I have participated in several rounds of interviews for our paralegal positions. I am hopeful that we will have two new paralegals very soon.

Litigation: On Monday, I sent you a recent decision issued by the court. The tenant of the third floor at 120 Waterbury Street filed an Article 78 petition challenging Order No. 5184, which denied Loft Law coverage pursuant to MDL § 281(6). In upholding the Board's Order, the Court agreed with the Board's finding that the evidence in the record showed that the third floor was occupied as a communal living space and that the occupants did not live independently as required for Article 7-C coverage.

Public Service Announcement: I'm sure Ms. Storey will speak to this, but it's worth repeating. We have an important deadline for two documents coming up for owners. First is Legalization Progress Reports, which are due on or before July 1st. The reports must be signed by both owners and architects. The reports can be filed by email, and Ms. Storey will provide the address in her report. These reports are important, and we will be reviewing them for enforcement where appropriate. I strongly encourage architects to accurately represent their progress on legalization and owners to review the report signing it.

Building registration renewals are also due July 1st. Building owners are required to complete the Registration Application and the Emergency Contact information. It is very important for the Loft Board staff to have the most current contact information for owners. If there is an emergency in one of our buildings, we must have the right contact information for the building owner. This is also important in the context of enforcement. This information will be used in serving violations and other correspondence from the Loft Board. Failure to meet these deadlines may lead to enforcement.

Mr. DeLaney: You provided statistics in May and the previous November showing the buildings that have met fire and safety standards, the buildings that have submitted the permit deadline, and the buildings in the Narrative Statement process. Those three figures totaled 220 in November (2022) and 247 in May of this year. And as we have about 323 buildings currently under our jurisdiction, that leaves 80 or 90 that don't fall into those three categories. Some of them are more advanced in terms of having a C of O, but where are they?

Ms. Cruz: That's a good question. I would have to report on that at a future meeting. Some of these buildings have been issued certificates of occupancy. Some of them have achieved compliance with the fire and safety standards of Article 7-B. I will review the numbers.

Mr. DeLaney: It would be helpful to have a breakdown at some point. Also, you advised us that we're not going to meet in July, and we traditionally take August off. So that means we won't be meeting again for three months, which I find concerning in terms of making progress, particularly with regard to giving feedback on the fact sheets. I see there are no new ones this month. I'm sure that's because you've been busy with other things, but I just wonder if you've given any thought to how we can keep the momentum going.

Ms. Cruz: We've discussed internally. We continue to work on the Fact Sheets. We made the changes that you suggested the Narrative Statement Facts Sheet, and we created the Sale of Rights Fact Sheet. We felt that this month there would just not be enough time for Board members to review them before the meeting. So, we thought it might be better to send the fact sheets after the meeting; and that we will do either tomorrow or next week.

We've been discussing how to break up the Narrative Statement Fact Sheet in ways that make sense. Work is continuing, and what we can commit to is sending those factsheets to you right around the time that we would have had the July Board meeting. Then, if you want to send it back to us with comments or suggestions, you can do that.

Mr. DeLaney: And to do that appropriately it should just be correspondence between single Board members and staff as opposed to a group.

Ms. Cruz: Yes

DEPUTY EXECUTIVE DIRECTOR/DEPUTY GENERAL COUNSEL'S REPORT -- Stephan Clarke

The Executive Director covered a lot of what I was going to, so I won't be redundant. As I've said, the Narrative Statement fact sheet will be the most difficult to create. Last month, we also discussed the LONO fact sheet. We made some modifications based on the feedback from the Board; we believe the LONO fact sheet is now complete; and we will send that fact sheet to the Board members after the meeting today.

The next fact sheets we'll be working on are Rent and Milestone Increases, and Minimum Housing Standards. After that, we conclude with a Code Compliance Fact Sheet and an Access Fact Sheet. But we are also considering a fact sheet just for Applications -- how to properly file applications with the Loft Board.

If the Board members think of additional fact sheets that might be helpful to create, they can always contact us, and we'll be happy to see if it's something we can put together.

Ms. Roslund asked if all current copies/ drafts of the fact sheets could be sent together in one email to avoid confusion, and **Mr. Clarke** agreed to do so.

Mr. DeLaney: In the future, there will be reason -- because of changes in the rules, or changes in state legislation, or case developments -- to revised certain fact sheets. So perhaps we should add a release date at the bottom of each, so that two years from now, someone can see that the one they've been relying on is an earlier version than the one that's currently up on our website.

Mr. Clarke: It's a good idea. We'll add that. Thank you.

SALE OF RIGHTS REPORT -- Florence Oyegue

We are currently making progress reviewing and approving the Sales of Rights agreements. However, there are delays in processing a good number of them due to avoidable errors or

omissions. To avoid rejection or delay of your Sales or Rights filing, please ensure that the consideration amount on the Sales Agreement is not redacted and to include an unredacted proof of payment of the sale price. Finally, to prevent a fine, the sales must be filed with the Loft Board within thirty (30) days of the sale.

Mr. Clarke: How much is the fine if they do not timely file?

Ms. Oyegue: It's \$4,000.

ENFORCEMENT REPORT -- Renee Storey

(1) Reasonable and Necessary Enforcement

- a. **129** violations have been issued since April 2022
 - i. **57** violations require a final disposition
 - 1. **36** are new violations that are still in the answer period
 - 2. **21** violations need an Administrative Determination

(2) Legalization Reports

- a. **150** legalization reports have been received since April 2023.
- b. **9** violations for failure to file quarterly reports

(3) Sales of Rights

- a. 5 violations issued for failure to file timely
 - i. 4 fines have been paid.
 - ii. 1 new NOV has been issued.

(4) Housing Maintenance

- a. We have housing maintenance cases against two owners.

(5) Conferences since May Board Meeting:

- a. 4 conferences held with owners related to reasonable and necessary violations

Public Service Announcements:

The Building Registration Renewal is due on July 1, 2023. These packets will be sent out shortly.

If you do not receive a packet by July 4th, please reach out to the Loft Board at

212-393-2616.

280 Broadway, First-floor atrium

New York, New York 10007

The packets will include a Contact Information sheet for owners to update their contact information. If there is a new owner, please make sure that we receive the company deed with the application. The Registration Renewal form and the Contact Information form can be emailed to loftboardquarterly@buildings.nyc.gov or can be hand delivered.

IMD Notices:

We want to make sure that each owner knows that they are required to have an IMD notice in the lobby of their building. The Lobby Notice must include the building's address, the IMD registration number, the contact information for the owner and managing agent, and the phone number and email address. A fine for not having these signs posted in the building five days after you receive your IMD number is \$1,000.

Mr. DeLaney: Thank you for your report. A couple of questions. Number one, the failure to file Quarterly Reports. If violations are issued, will those result in fines?

Ms. Storey: There is a thirty-day compliance period, and if they become compliant, no, we're not going to issue a fine. But right at that thirty-first day, I will issue an administrative determination imposing a fine. I believe the amount is \$1000.

Mr. DeLaney: In terms of the building registrations, how are we sending those now?

Ms. Storey: We're sending them out by mail to avoid any problems anyone might have with downloading and printing them, because we need a physical, original hard copy.

Mr. DeLaney complimented both Ms. Storey and Mr. Kim on the quality of the reports they have been issuing and asked if a date could be added, as he is keeping them all. **Ms. Storey** agreed to do so.

Ms. Roslund: Are some of these fines ever cumulative? For example, with the IMD sign, if it goes on longer, is there a second fine issued? Or if it goes up and then comes down?

Ms. Storey said she would check, but that it usually isn't an issue, because normally, once the owner knows a fine will be levied, they come into compliance.

Ms. Cruz added that the only cumulative fines are for Failure to Register and Housing Maintenance violations.

NARRATIVE STATEMENT REPORT -- James Kim

Updated statistics of the buildings in the “Open Narrative Statement” milestone of buildings under Loft Board jurisdiction have been provided.

At the last meeting, I brought to the Board and the public’s attention several topics including (1) buildings inactive in the legalization process, (2) incorrect and incomplete requests for Loft Board approval letters, and (3) the increasing number of Alternate Plan disputes we have been seeing as of late. This month, I would like to discuss: (1) another check-in on those inactive buildings, (2) legalization filings, and (3) administrative difficulties that have arisen during the Alternate Plan process.

1. Inactive Buildings

- a. Loft Board staff will schedule conferences with the owner of record, tenants, and the last known architects/professionals associated with the building.

2. Legalization

- a. Building owners continue to file more and more legalization filings. We ask everyone to be patient as we review and process submissions both administratively and substantively.
- b. That being said, we have also seen professionals on both sides seek delays or postponements for various reasons. We acknowledge that within the small industry of legal and design professionals who work on Loft buildings many of them have gotten quite busy with projects, but we note that granting postponements is extremely resource-intensive on Loft Board staff.

3. Department of Buildings

- a. As a quick refresher: Loft Board Narrative Statement Process and DOB plan examination are two separate but required tracks for all applicants seeking to do legalization work in Loft Board buildings.

b. As part of the Alternate Plan dispute process, professionals have brought to our attention that much if not all of the existing infrastructure and procedures for DOB plan examination via the filing of job applications is oriented from a building owner's point of view, not tenants. However, much of the purpose of a tenant's Alternate Plan filing is to go through DOB plan examination to demonstrate/prove that their Alternate Plan is also code-compliant and can serve as a viable legalization plan. We have had some meetings as of late with plan examiners in various boroughs to educate them on Alternate Plans and will continue to do so.

> Ideas

- **Have the same plan examiner examine both Owner's and tenant's plans.** The tenant's architect should request plan examination review by the same DOB plan examiner.

- **Forms and documentation.** Much of it, both within DOB and other agencies such as LPC, contain affirmations on behalf of owners that must be completed to clear objections that arise during plan examination. However, with Alternate Plans, tenants who have filed Alternate Plans (and their professionals) have understandably not been willing to put their name and professional licenses to such affirmations, as they are obviously not owners.
 - We are looking into what we can do to help on this issue.

- Reminder for tenants: Like owner's architects and engineers (as is usually the case), your professionals must also take all **reasonable and necessary** actions to clear all their DOB plan examination objections.

Mr. DeLaney: Thank you. That's a lot of information to digest. I read with interest the minutes from your presentation last month, and I just had a couple of questions. You refer to -- in capital letters -- dispute resolution proceeding. That's the Alternate Plan part, correct?

Ms. Cruz: Yes

Mr. Kim: Yes. It is the adjudicative process for Alternate Plan filings.

Mr. DeLaney: Right. I think it's the BP case prefix. I just wanted to make sure it was the same thing. You also noted something I found very thought provoking. You commented that narrative statement filings often contain the same mistakes on submissions by architects, engineers, and expeditors. Could you draw up for the Board members a list of the most common mistakes?

Mr. Kim: It really is simple, factual things that we ask for, such as the job number for the Alt 1, different dates, that sort of thing.

Mr. DeLaney: If you could, over the next few weeks, create a top 10 or top 20 list of mistakes, that would be very helpful to slowly educate the community. Because I know, at least on the tenant side, we've seen the retirement of an attorney who handled a lot of work, and there are some new attorneys coming in who know very little about the Loft Law. And sometimes some of the architects and engineers may get a little rusty. So, if you had that kind of list, it might help people just double-check.

Mr. Kim: I would just note that our forms and all the documentation we've created have been intentionally created to be as clear and self-explanatory as possible. So, it does seem to be just errors or perhaps carelessness rather than misunderstanding most of the time. But regardless, your point is taken, and we'll work on that.

Mr. DeLaney: Thank you. And this is kind of blue-sky territory, but the Narrative Statement process was created when ten units was a huge building, and the average was four to six units in a building, perhaps. But now, because of the 281(5) and 281(6), we're seeing much bigger buildings in not only Brooklyn but also in Queens and the Bronx. And it got me thinking about the recurring comments regarding the desire for a written summary and/or recording of the Narrative Statement conferences.

I understand the desire to keep it informal and off the record; and I know we've just finished a massive amendment to the rules; and again, this is just musing on my part, but perhaps there's a way that the Narrative Statement conference could mutate over the next months, years, to be a little bit more along the lines of the way OATH has a settlement judge and then a trial judge. So that perhaps there's a way that the initial Narrative Statement discussions could be as

informal as they are, but if there's no resolution, then it moves to a somewhat more formal process, where notes are taken, and a record is created. So, that's the thought. And I really am addressing that to all the Board staff, not just to Mr. Kim.

Ms. Cruz asked if that didn't seem similar to the system already in place.

Mr. DeLaney: Yes, but I just wonder if there's a way, particularly for these bigger buildings, that there could be a phase one: try to get it done in phase one, otherwise, you're going to be moved to the more formal process. And maybe that would encourage people to settle initially. We actually have a very creative stipulation in one of the cases on today's docket that posits this: the owner and tenants having a pre-Narrative Statement conference Narrative Statement conference on their own.

Obviously, the goal here is to get people in agreement about how the work is going to be done in the building; what work is going to be done in the building; and when it's going to be done. So, it led me to think, again, based on Mr. Kim's very well thought out presentations over the last three or four months, maybe there's a better way.

Ms. Roslund: Or even with what you just said about a plan examiner examining both sets of documents -- and I know this is not feasible because it's under the purview of the Department of Buildings -- but, if there are two separate filings, they get two separate job numbers for the Alt 1 filing and the Alternate Plan filing?

Mr. Kim: That's correct, yes.

Ms. Roslund: So then, if the Alternate Plan filing is approved by the Department of Buildings, does the owner then withdraw his original filing and that's it?

Mr. Kim: No. So that, in and of itself, if what you're referring to by DOB approval is clearing all DOB plan examiner objections, that does not affect the owner's Alt 1. After that is completed, then it would be right for Loft Board staff to initiate the dispute resolution proceeding.

Mr. DeLaney: Very few cases have ever come to the Board for resolution. What I'm wondering is if there is a way to make it more like, Oh, you don't want to go to the second story. You want to stay out of the basement. You want to get this done on the first floor. And I didn't realize that the Alternative Plan may go to a different plans examiner. That seems totally crazy, I'm sorry.

Mr. Kim: Absolutely, it does. Yes. I think this is one of those situations where the commonsense route is one that, as anything else, requires a new policy be implemented. And any such procedure, as you know, takes time and effort.

Mr. Clarke: I'd like to add that I think there are two things that we need to consider. First of all, the Narrative Statement process, in and of itself, is a piece of the process. The Loft Board staff has not necessarily had all the resources required to run this as efficiently as OATH. There is also a lot of misinformation. But I think that now that the Loft Board has been staffing up, will have additional resources, and the information on the fact sheets is providing correct information about what the Narrative Statement process. The process may be improved.

THE CASES:

Appeal and Reconciliation Calendar

Chairperson Patino stated that there are four cases on this calendar. Two cases were combined into one Order. The first case is

#	Applicant(s)	Address	Docket No.
1	Thomas Brigham	72 Warren Street, New York	AD-0116
<i>The Loft Board denied the appeal of the Administrative Determination dated September 25, 2018, which provided for a Letter of No Objection to the issuance of a temporary certification of occupancy.</i>			

Mr. Clarke presented this case.

Chairperson Patino asked if there were any comments on this case. Hearing none, he asked for a motion to accept the case, and for a second.

Mr. Hylton moved to accept this case, and **Ms. Rajan** seconded.

The vote

Members concurring: Mr. Hylton, Mr. DeLaney, Ms. Rajan, Ms. Oddo, Chairperson Patino
Members dissenting: 0
Members abstaining: 0
Members absent: Mr. Barowitz, Mr. Roche
Members recused: Ms. Roslund

Chairperson Patino introduced the second case on this calendar.

#	Applicant(s)	Address	Docket No.
2	Thomas Brigham et al. and B. Jaffe Real Estate Holdings, LLC.	72 Warren Street, New York	AD-0117 AD-0120
<i>The Loft Board denied the appeals of two Administrative Determinations dated November 23, 2021, which rejected the reconsideration applications filed to challenge Order No. 5069.</i>			

Mr. Clarke presented this case.

Chairperson Patino asked if there were any comments on this case. Hearing none, he asked for a motion to accept the case, and for a second.

Ms. Rajan moved to accept this case, and Ms. Oddo seconded.

The vote

Members concurring: Mr. Hylton, Mr. DeLaney, Ms. Rajan, Ms. Oddo, Chairperson Patino
Members dissenting: 0
Members abstaining: 0
Members absent: Mr. Barowitz, Mr. Roche
Members recused: Ms. Roslund

Chairperson Patino introduced the third case on this calendar.

#	Applicant(s)	Address	Docket No.
3.	Layne Bourgoyne, Leslie Coath, Steven Kraitman, Joey Lyne	225 East 134 Street, Bronx	AD-0128
<i>The Loft Board denied in part and granted in part Tenants' appeal of the Administrative Determination dated April 5, 2023, which determined that tenants' comments did not establish unreasonable interference or diminution of services. The Loft Board found that tenants raised a diminution of services claim for elevator service.</i>			

Ms. Storey presented this case.

Chairperson Patino asked if there were comments on this case.

Mr. DeLaney: At the quasi-judicial legal briefing, it was brought to my attention that there was communication after the record was closed in this case from an attorney from one of the parties, maybe also a phone call. I've raised this concern in the past, that we don't seem to have clear guidelines for the public and for the professionals on this topic, and it just happened to come up. I don't know how often it happens. I know of at least one other instance, but there may be dozens of these. And I think it affects the integrity of the Loft Board. It runs the risk of having people have concerns about what we do. Particularly if there are practitioners who have done this more than once. I am seriously concerned about it.

Mr. Clarke: In my experience here, we haven't seen that too often. But if we do, we present it to the Board to be as transparent as possible. And of course, we do not take lightly owners or any party communicating about a matter that's before the Board. It's not proper. Board members should make the final determinations free of any attempts to sway their opinion prior to their vote.

Ms. Rajan: Is the concern related to whether there is a record of these communications, either with the Loft Board staff or the Board outside of usual practices?

Mr. DeLaney: The last time this came up, emails were sent to several members of the Board. I was one of them. So, I got an email that you didn't get. That's not right, and at some point, there has to be some way to make that clear.

Ms. Rajan: Okay, so you want to be able to communicate to the members of the public how inappropriate that is.

Mr. DeLaney: And to the staff as well. In times past, prior to the invention of email, if the Board received a letter addressed to a Board member about a case, they would open it and say we got a letter, but we're not going to give it to you until after the case is decided. Or perhaps not tell you anything about it until after the case was decided. But in the age of email, it's almost impossible not to have read something before realizing you shouldn't have read it. I don't think we quite have the process as tight as it ought to be.

Mr. Clarke: The staff does not condone this. We take it seriously. If we don't bring it to the Board's attention, it is because it might influence the decision. We use our best judgment. Like you said, technology's changing; it's easy to open an email, and you don't even know what you're reading until you read it. A lot of times, I open an email thinking it's a complaint or something else, and then realize it's regarding a legal issue. So, we try our best to separate these things.

Mr. DeLaney: There was a time when newspapers would publish notices of violation and other public records. Maybe the names of people who do this should be disclosed. There should be some mechanism for consequences in my view.

Mr. Clarke: We'll take that into consideration.

Ms. Rajan asked if the staff members had a protocol for responding to these communications; if anything was said to the party who sent it.

Mr. Clarke indicated that there was not a formal protocol in place; that it was usually just discussed internally; nothing was done externally. But that each instance was handled individually, depending on the circumstances under which the information was received and from whom.

Mr. DeLaney: Obviously, if an attorney who practices regularly at the Board calls, you don't know whether they're calling to ask about case A, case B, or case C. But if it's about something on the docket, that's a problem. And Board members, too, need to conduct themselves with propriety. We once had a public member who took it upon themselves to go visit a building and make note of the names on the buzzers before the vote. And it was pointed out to that individual that that's not in the record. You're not supposed to conduct your own investigation. So, I have concerns, and I've expressed them.

Mr. Clarke: I do agree with your concern, but what I can say, to the Board members and members of the public, is the Loft Board staff conducts themselves with a high level of integrity.

Chairperson Patino asked for a motion to accept the case, and for a second.

Mr. Hylton moved to accept this case, and Ms. Roslund seconded.

The vote

- Members concurring: Mr. Hylton, Mr. DeLaney, Ms. Roslund, Ms. Rajan, Ms. Oddo, Chairperson Patino
- Members dissenting: 0
- Members abstaining: 0
- Members absent: Mr. Barowitz, Mr. Roche
- Members recused: 0

Summary Calendar

Chairperson Patino introduced the three cases on this calendar, saying they are usually voted on as a block.

#	Applicant(s)	Address	Docket No.
4.	Chyelle Milgrom and Raymond Jones	210 Cook Street, Brooklyn	TR-1418, PO-0157
<i>The Loft Board deemed the coverage and protected occupancy applications withdrawn with prejudice.</i>			
5.	Caldwell Dowling	85 Franklin Street, New York	TR-1451
<i>The Loft Board deemed the coverage application withdrawn with prejudice.</i>			
6.	David Benjamin Berrie	647 Broadway, New York	TR-1455
<i>The Loft Board deemed the coverage application withdrawn with prejudice.</i>			

Chairperson Patino asked if there were any comments on these cases. Hearing none, he asked for a motion to accept the case, and for a second.

Ms. Rajan moved to accept this case, and Mr. Hylton seconded.

The vote

- Members concurring: Mr. Hylton, Mr. DeLaney, Ms. Roslund, Ms. Rajan, Ms. Oddo, Chairperson Patino
- Members dissenting: 0
- Members abstaining: 0
- Members absent: Mr. Barowitz, Mr. Roche
- Members recused: 0

Master Calendar

Chairperson Patino introduced the three cases on this calendar, saying they are usually voted on as a block.

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#	Applicant(s)	Address	Docket No.
7.	Manbox Realty Corp. and 1141 Manhattan Avenue Realty Corp.	1139-1141 Manhattan Avenue, Brooklyn	LE-0737 RG-0219
<i>The Loft Board granted the application for removal from the Loft Board's jurisdiction.</i>			
8.	The 15 Jay Street Condominium	15 Jay Street, New York	LE-0741
<i>The Loft Board granted the application for removal from the Loft Board's jurisdiction.</i>			
9.	62 Washington Avenue Condominium c/o David Zaccheo, Jacqueline Tarry, Bradley McCallum	62 Washington Avenue, Brooklyn	LE-0742
<i>The Loft Board granted the application for removal from the Loft Board's jurisdiction.</i>			

Chairperson Patino asked if there were any comments on these cases. Hearing none, he asked for a motion to accept the case, and for a second.

Ms. Roslund moved to accept this case, and **Mr. Hylton** seconded.

The vote

Members concurring: Mr. Hylton, Mr. DeLaney, Ms. Roslund, Ms. Rajan, Ms. Oddo,
Chairperson Patino
Members dissenting: 0
Members abstaining: 0
Members absent: Mr. Barowitz, Mr. Roche
Members recused: 0

Chairperson Patino: Thank you. So, this will conclude our June 15, 2023, Loft Board meeting. The July 2023 Board meeting has been cancelled due to scheduling conflicts, so our next public meeting is scheduled for September 21, 2023. Thank you.

The Board Meeting ended at 3:02pm.